

# Notice of Allowability

Application No.

10/661,241

Examiner

Matthew L. Fedowitz

Applicant(s)

HURLEY, LAURENCE H.

Art Unit

1623

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to claim amendments submitted June 6, 2005.
2. ☒ The allowed claim(s) is/are 1-6.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 11/28/03
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

**JAMES O. WILSON**  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600

### **DETAILED ACTION**

Claims 7 and 8 have been cancelled and compounds 5-6, 9-11, 13 and 15-20 have been cancelled. Claims 1-6 have been found to be allowable.

#### ***Examiner's Amendment***

An examiner's amendment to the record appears below. Should the charges and/or additions be unacceptable to the applicant, an amendment may be filed as provided by 37 CR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

1. In claim 2, the variable Y in structure 8 has been replaced with --NH--; wherein the two bonds should connect to the N of the NH.

#### ***Allowable Subject Matter***

Claims 1-5 are directed to an allowable product. Pursuant to the procedures set forth in the Official Gazette notice dated March 26, 1996 (1184 O.G. 86), claim 6, directed to the process of using the patentable product, previously withdrawn from consideration as a result of a restriction requirement, is now subject to being rejoined. Claim 6 is hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Since all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, the restriction requirement made in the Office action mailed on January 11, 2005 is hereby withdrawn.

The applicant's arguments and amendments presented in the reply dated February 17, 2005 and the interview dated May 24, 2005 are found to be persuasive. Claims 1-6 are found to

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be allowable because the claimed subject matter is not taught nor fairly suggested in the prior art. The applicant's claim requirement wherein at least one R<sup>1</sup> moiety must exist in a cationic state at physiologic pH is the critical factor that distinguishes the applicant's claims from the prior art.

The closest prior art is found in the Narayanan *et al.* articles wherein similar expanded porphyrin compounds are disclosed; however, the compounds that are disclosed do not contain a cationic moiety at physiologic pH or suggest the presence of such a moiety at physiologic pH.

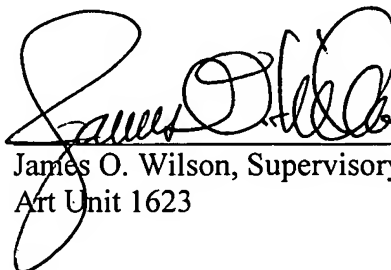
### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew L. Fedowitz whose telephone number is (571) 272-. If attempts to reach the examiner by telephone are unsuccessful, the examiner's primary, James O. Wilson, can be reached on (571) 272-0661. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Matthew L. Fedowitz, Pharm.D., Esq.



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James O. Wilson, Supervisory Patent Examiner  
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